

1 JOHN R. ZEIMANTZ
2 FELTMAN EWING, P.S.
3 421 W. Riverside, Suite 1600
4 Spokane, WA 99201
5 Telephone: (509) 838-6800
6 Facsimile: (509) 744-3436
7 Email: johnz@feltmanewing.com

8 Attorneys for Plaintiff
9 *THE BOLDT GROUP, INC.*

10
11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**

13 THE BOLDT GROUP, INC.,

No.

14
15 Plaintiff,

16 v.

COMPLAINT

17 NAC, INC. d/b/a NAC
18 ARCHITECTURE,

19 Defendant.
20

21 Plaintiff, The Boldt Group, Inc., by its attorneys Ryan Kromholz and Manion,
22 S.C., and John R. Zeimantz and Feltman Ewing, P.S., brings this action against
23 Defendant, NAC, Inc. d/b/a, NAC Architecture, and alleges as follows:
24
25
26
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

PARTIES

1. Plaintiff The Boldt Group, Inc. (hereinafter "Boldt"), is a Wisconsin corporation having a principal place of business address of 2525 N. Roemer Road, Appleton, Wisconsin 54911.

2. Upon information and belief, Defendant NAC, Inc., d/b/a NAC Architecture, (hereinafter "NAC") is a Washington corporation having a principal place of business address of 1203 W. Riverside Avenue, Spokane, Washington, 99201-1107.

JURISDICTION AND VENUE

3. This is an action arising under at least the trademark laws of the United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 and 1367 and 15 U.S.C. § 1121.

4. This Court has personal jurisdiction over Defendant NAC because Defendant NAC is a domestic corporation.

5. This Court also has personal jurisdiction over Defendant NAC because Defendant NAC is engaged in substantial and not isolated activities within this district. Upon information and belief, Defendant transacts business within the Eastern District of Washington; contracts to supply services within the Eastern

1 District of Washington; and regularly solicits business and engages in a persistent
2 course of conduct in the Eastern District of Washington; such business and services
3 relating to design, construction, and project delivery that are likely to be confused
4 with Boldt's federally registered trademarks.
5

6 6. Venue in this judicial district is proper pursuant to 28 U.S.C.
7 §1391(b)(2) and §1391 (c).
8

9 **BACKGROUND**
10

11 7. Boldt is the owner of U.S. Trademark Registration No. 3,955,152 (the
12 “‘152 Registration”) for the trademark INTEGRATED LEAN PROJECT
13 DELIVERY for “Construction, repair, and renovation of commercial, industrial,
14 governmental, institutional, educational, recreational, healthcare, and religious
15 buildings and power and bioenergy facilities; and construction of wind turbines.
16 Provide real estate development, construction project planning and development,
17 construction management, and general construction contracting services” in
18 International Class 37. The ‘152 Registration indicates a date of first use in
19 commerce of July 1, 2010. The ‘152 Registration is valid, incontestable, and
20 subsisting. A copy of the ‘152 Registration is attached to the Complaint as Exhibit
21 A.
22
23
24
25
26
27
28
29

1 8. Boldt is also the owner of U.S. Trademark Registration No. 4,007,483
2 (the “483 Registration”) for the trademark INTEGRATED LEAN PROJECT
3 DELIVERY for “Architectural design and engineering services; conceptual design
4 of commercial, industrial, governmental, institutional, educational, recreational,
5 healthcare, and religious buildings and power and bioenergy facilities and other
6 buildings” in International Class 42, with a date of first use in commerce of January
7 24, 2011. The ‘483 Registration is valid, incontestable, and subsisting. A copy of the
8 ‘483 Registration is attached to the Complaint as Exhibit B.
9

10
11
12 9. Boldt is also the owner of U.S. Trademark Registration No. 3,929,981
13 (the “981 Registration”) for the trademark ILPD for “Construction, repair, and
14 renovation of commercial, industrial, governmental, institutional, educational,
15 recreational, healthcare, and religious buildings and power and bioenergy facilities;
16 and construction of wind turbines. Provide real estate development, construction
17 project planning and development, construction management, and general
18 construction contracting services” in International Class 37 and “Architectural
19 design and engineering services; conceptual design of commercial, industrial,
20 governmental, institutional, educational, recreational, healthcare, and religious
21 buildings and power and bioenergy facilities and other buildings” in International
22 Class 42, with a date of first use in commerce of July 1, 2010. The ‘981 Registration
23
24
25
26
27

1 is valid, incontestable, and subsisting. A copy of the '981 Registration is attached to
2 the Complaint as Exhibit C.

3
4 10. Boldt has been using the INTEGRATED LEAN PROJECT
5 DELIVERY and ILPD trademarks for over eight (8) years in the United States in
6 conjunction with its construction and project management services. Boldt is the
7 senior user in this action.

9
10 11. Boldt has expended substantial sums of money and time in the
11 development, advertising, and promotion of the INTEGRATED LEAN PROJECT
12 DELIVERY and ILPD trademarks. As a result, the INTEGRATED LEAN
13 PROJECT DELIVERY and ILPD trademarks have achieved recognition and
14 accumulated goodwill, and has come to be recognized and relied on as identifying
15 high quality services originating exclusively from Boldt.

16
17 12. Upon information and belief, Defendant uses marks that are likely to
18 confuse or deceive members of the public into believing that Defendant is connected
19 with or associated with Boldt, or confuse as to the origin of the services provided by
20 Boldt.

21
22 13. Upon information and belief, Defendant owns and operates the website
23 www.nacarchitecture.com, through which Defendant advertises, markets, and sells
24 design, construction, and project delivery services using the term "Integrated Lean
25
26
27

1 Project Delivery,” which is likely to be confused with the INTEGRATED LEAN
2 PROJECT DELIVERY and ILPD trademarks. True and accurate screenshots of
3 services offered for sale on Defendant’s website are attached as Exhibit D.
4

5 14. Defendant uses the terms “Integrated Lean Project Delivery” and
6 “ILPD,” which are identical to Boldt’s INTEGRATED LEAN PROJECT
7 DELIVERY and ILPD trademark in sight, sound, and meaning.
8

9 15. Boldt and Defendant offer and render design, construction, and project
10 delivery services in the same channels of trade to the same class of customers and
11 use the same advertising mediums, including the internet.
12

13 16. Consumers and others in the trade are likely to mistakenly believe that
14 Defendant and Defendant’s services are franchised, licensed, or approved by Boldt.
15

16 17. Defendant had knowledge and notice of the INTEGRATED LEAN
17 PROJECT DELIVERY and ILPD trademarks and Boldt’s rights, goodwill, and
18 valuable reputation in and to the same. Despite having this knowledge, and without
19 authorization, Defendant has used and continues to use marks which are likely to be
20 confused with the INTEGRATED LEAN PROJECT DELIVERY and ILPD
21 trademarks for the purpose of taking advantage of Boldt’s goodwill and valuable
22 reputation in the INTEGRATED LEAN PROJECT DELIVERY and ILPD
23 trademarks.
24
25
26
27

1 18. Defendant's actions are willful, wanton, and in deliberate disregard of
2 Boldt's rights, and are done to cause confusion. Thus, the present case is an
3 exceptional case.
4

5 19. Boldt has previously contacted Defendant in attempts to resolve this
6 dispute. However, Defendant has refused to cease the use of marks that are likely to
7 be confused with the INTEGRATED LEAN PROJECT DELIVERY and ILPD
8 trademarks.
9

10 20. On or about June 26, 2017, counsel for Boldt contacted Defendant, and
11 requested that Defendant cease and desist from any further use of "Integrated Lean
12 Project Delivery," "ILPD," or any variation thereof in association with Defendant's
13 business.
14

15 21. On or about August 22, 2017, counsel for Defendant subsequently
16 denied Boldt's request for Defendant to cease using marks "Integrated Lean Project
17 Delivery," or any variation thereof stating that Defendant "will not be complying"
18 with Boldt's demands and will continue using Boldt's INTEGRATED LEAN
19 PROJECT DELIVERY and ILPD trademarks while promoting its construction and
20 project delivery services.
21
22
23
24
25
26
27

COUNT I

Infringement of Federally Registered Trademark – 15 U.S.C. § 1114

22. Boldt realleges and incorporates by reference paragraphs 1-21 of the Complaint.

23. This Count arises under 15 U.S.C. § 1114, Section 32 of the Lanham Act, for infringement of the two (2) INTEGRATED LEAN PROJECT DELIVERY trademarks and one (1) ILPD trademark.

24. Defendant is, without consent of Boldt, using in commerce colorable imitations of the federally registered INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks in connection with the offering and rendering of design, construction, and project delivery services, and such use is likely to cause confusion, mistake, or to deceive. These acts have been committed with knowledge and with the intent to cause confusion, mistake, or to deceive.

25. Defendant has used in commerce marks that are likely to be confused with the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks for identical services, namely design, construction, and project delivery.

26. Defendant's conduct is willful and with full knowledge of Boldt's prior use of and rights in the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks.

27. Defendant's use of confusingly similar imitations of the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks is without authorization, permission or consent.

28. Defendant's wrongful conduct has damaged Boldt, and Boldt has no adequate remedy at law. Unless these acts are restrained and enjoined by this Court, Defendant will continue to infringe Boldt's INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks, and the resulting damage to Boldt will be substantial, continuing, and irreparable.

29. As a direct and proximate result of Defendant's violation of Boldt's trademark rights, Boldt has been damaged in an amount to be determined at trial. Defendant is also liable for treble damages and attorneys' fees.

COUNT II

Common Law Trademark Infringement

30. Boldt realleges and incorporates by reference paragraphs 1-29 of the Complaint.

31. Boldt has common law rights in the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks in connection with specific services. Defendant is using marks that are likely to be confused with the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks on services that are identical to the

1 services specified in the INTEGRATED LEAN PROJECT DELIVERY and ILPD
2 trademarks.

3
4 32. Despite its actual and constructive knowledge of Boldt's ownership and
5 prior use of the INTEGRATED LEAN PROJECT DELIVERY and ILPD
6 trademarks, Defendant has continued to use confusingly similar marks without
7 Boldt's authorization or consent.
8

9
10 33. Defendant's actions are deliberate and willful and have been done with
11 the intention of trading upon the valuable goodwill built up by Boldt in the
12 INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks.
13

14 34. As a direct and proximate result of Defendant's violation of Boldt's
15 trademark rights, Boldt has been damaged in an amount to be determined at trial.
16 Defendant is also liable for treble damages and attorneys' fees.
17

18 **COUNT III**

19 **False Designation of Origin – 15 U.S.C. § 1125(a)**

20
21 35. Boldt realleges and incorporates by reference paragraphs 1-34 of the
22 Complaint.
23

24 36. This Count arises under 15 U.S.C. § 1125(a), Section 43(a) of the
25 Lanham Act, for false designation of origin.
26
27

37. Defendant has adopted marks that are likely to be confused with the INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks in connection with the sale of identical services, namely the design, construction, and project delivery. This constitutes false designation of origin and association and unfair competition, which are likely to cause confusion, mistake or deceive as to affiliation, connection or association of Defendant with Plaintiff, Boldt, and/or as to origin, sponsorship or approval of Defendant's goods by Plaintiff, Boldt, in violation of 15 U.S.C. § 1125(a).

38. As a direct and proximate result of Defendant's violation of Boldt's trademark rights, Boldt has been damaged in an amount to be determined at trial. Defendant is also liable for treble damages and attorneys' fees.

COUNT IV
Common Law Unfair Competition

39. Boldt realleges and incorporates by reference paragraphs 1-38 of the Complaint.

40. Defendant's acts constitute unfair competition and misappropriation of Boldt's name, business reputation, and goodwill, under the common law of the State of Washington.

1 41. Defendant's acts are intended to trade on Boldt's name, reputation, and
2 goodwill.

3 42. Defendant's wrongful conduct has damaged Boldt, and Boldt has no
4 adequate remedy at law. Unless these acts are restrained and enjoined by this Court,
5 Defendant will continue to infringe Boldt's INTEGRATED LEAN PROJECT
6 DELIVERY and ILPD trademarks, and the resulting damage to Boldt will be
7 substantial, continuing, and irreparable.
8

9 43. As a direct and proximate result of Defendant's violation of Boldt's
10 trademark rights, Boldt has been damaged in an amount to be determined at trial.
11 Defendant is also liable for treble damages and attorneys' fees.
12

13
14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, Boldt, requests judgment and relief, and requests
17 that the Court:
18

- 19 (A) Find that Defendant has committed trademark infringement;
20
21 (B) Enter judgment for Boldt on all Counts of the Complaint;
22
23 (C) Issue a permanent injunction including, but not limited to, an Order
24 enjoining Defendant from using any marks which are likely to be confused with the
25 INTEGRATED LEAN PROJECT DELIVERY and ILPD trademarks in connection
26 with Defendant's business;
27

1 (D) Direct Defendant to account for all services under any mark
2 confusingly similar to the INTEGRATED LEAN PROJECT DELIVERY and ILPD
3 trademarks, whether offered or rendered, and to cease all such services;
4

5 (E) Award Boldt its actual damages in an amount to be proved at trial;

6 (F) Order an accounting by Defendant of any profits derived from its
7 wrongful acts;
8

9 (G) Treble the amounts awarded to Boldt pursuant to 15 U.S.C. § 1117;

10 (H) Award Boldt its reasonable attorneys' fees and expenses incurred in
11 connection with bringing this action pursuant to 15 U.S.C. § 1117;
12

13 (I) Charge all costs of this action against Defendant;

14 (J) Find Defendant's conduct to be willful and wanton;

15 (K) Find this to be an exceptional case; and

16 (L) Grant such other and further relief as this Court deems just and proper.
17
18
19
20
21
22
23
24
25
26
27

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Boldt hereby demands and requests a trial by jury of all claims and issues so triable.

DATED: June 4, 2018



JOHN R. ZEIMANTZ, WSBA #9502

Email: johnz@feltmanewing.com

Attorneys for Plaintiff

THE BOLDT GROUP, INC.

JOHN M. MANION

Email: jmanion@rkmiplaw.com

JOSEPH A. KROMHOLZ

Email: jkromholz@rkmiplaw.com

KEITH REESE-KELLEY

Email: krees-kelley@rkmiplaw.com

RYAN KROMHOLZ & MANION, S.C.

P.O. Box 26618

Milwaukee, WI 53226

Telephone: (262) 783-1300

Facsimile: (262) 783-1211

PRO HAC VICE

Attorneys for Plaintiff

THE BOLDT GROUP, INC.